Spain. As the Supréme Court has said, the object of said acts was to indemnify the States for expenses incurred. That being the case, it is difficult to see how that indemnification could be fully carried out if the United States should refuse to reimburse the States for the expenses which were properly and necessarily incurred in the performance of the duties which have been imposed upon them.

It seems to me that the decision of the Supreme Court should now be construed as overruling the illiberal decision and opinion of the Second Comptroller and Attorney-General.

In conclusion, I am of the opinion, and so hold, that the governor of the State of Idaho is entitled to be reimbursed for the necessary costs, charges, and expenses properly incurred in the preparation of the account of the State, so as to meet the requirements of the accounting officers, even though said expenses were incurred after the State troops were mustered into the service of the United States; it being understood, however, that this will not cover or authorize the reimbursement for the regular salaries to permanent officers of the State while they may be so employed, but will include only the services of such temporary officers and clerical force and other incidental expenses as it may have been found necessary to employ and incur for the sole purpose of the preparation of these accounts.

These expenses must have been *directly* connected with the work of preparing the accounts, and will not include those *remotely* connected therewith, such as the employment of attorneys and agents, etc., in looking after the claims after their presentation to the Government.

I am also of opinion, and hold, that the act of July 8, 1898, is broad enough in its terms to include expenses properly and necessarily incurred in aiding the United States to raise a volunteer army, even though said expenses may have been incurred prior to the time of the declaration of war against Spain. The language of that act is "expenses that have been incurred," implying clearly a past date, without fixing definitely that date. The only limitation that can apply to this is that the expenses must have been directly and necessarily incurred for the sole purpose of aiding the United States in its war against Spain.

ERECTING BUILDINGS ON LEASED GROUND.

It is the general policy of Congress that no public building shall be erected on ground not owned by the United States.

A small temporary building for the shelter of a keeper of the New Haven Long Wharf post light is not a public building within the meaning of sections 355, 1136, and 3734, Revised Statutes.

The provision in the act of June 23, 1874, as amended by the act of October 2, 1888, which authorizes the Light-House Board "to lease the necessary ground for such lights and beacons as are for temporary use or are used to point out changeable channels," must be construed to preclude the Board from leasing ground for any light or beacon not embraced in one of the classes specified.

(*Comptroller Tracewell to the Secretary of the Treasury, May 16, 1900.*)

In your communication of April 30, 1900, you say:

"At the instance of the Light-House Board, I have to state that the New York, New Haven and Hartford Railroad Company have offered to lease to the United States a small plot of land on New Haven Long Wharf, New Haven, Conn., for a site for an inexpensive temporary structure for the shelter of the light keeper who attends to the post light at that place.

"I have the honor to inquire if section 355, Revised Statutes, or any other section, prohibits the erection of such a structure, providing that the structure be so built as to be easily removable, and that a clause be inserted in the lease authorizing its removal, by the United States, at any time prior to the termination of the lease * * *"

From a paper transmitted with your communication it also appears that the dimensions of the house, the erection of which is contemplated, are estimated at "about 6 by 8 feet."

Section 355, Revised Statutes, provides that—

"No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building of any kind whatever until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be to such purchase has been given."

Section 1136 also provides that—

"It shall be the duty of all officers of the United States having any of the title papers (properly purchased, or about to be purchased, for erection of public buildings) in their possession to furnish them forthwith to the Attorney-General.

No public money shall be expended until the written opinion of the Attorney-General shall be had."

Neither of these sections applies to the erection of public buildings or other structures upon land *leased to the United* States; they are restricted by their terms to the expenditure of public money upon or in connection with land purchased by the United States for the erection thereon of such buildings or structures.

But the question might be raised whether a structure such as that contemplated is not a public building, and whether its erection on land not owned by the United States is not in contravention of the policy of Congress indicated by the foregoing and other statutory provisions.

The act of March 3, 1883 (22 Stat., 605), contains the following provision:

"The Secretary of the Treasury is authorized to acquire, by *private purchase* or by condemnation, the necessary lands for public buildings and light-houses to be constructed, and for which money is appropriated." * * *

The act of March 2, 1899 (25 Stat., 940), contains the following provisions:

"That hereafter no plan shall be approved by the Secretary of the Treasury for any public building authorized by Congress to be erected until after the site therefor shall have been finally selected. * * * And payments for sites for public buildings under the control of the Treasury Department shall be made at the Treasury Department." * * *

These provisions indicate *that it is the general policy* of Congress that no public building shall be erected on land not owned by the United States. But I doubt *if a temporary* structure of the character indicated can properly be regarded as a public building within the meaning of these *provisions*. It is true that in a broad sense any building belonging to the United States, and especially if designed for public use, may be said to be a public building. Probably it is also true that no such building can properly be distinguished and excluded from the category of a public building because it does not exceed a certain size, nor because its cost does not exceed any arbitrary sum, nor because it is not designed for use in excess of any particular number of years. But there are other provisions of law from which it may be inferred that not every little structure belonging to the United States that may be in

a broad sense a building is a public building within the meaning of the foregoing provisions. For example, it is provided by section 3734 of the Revised Statutes that—

"Before any new buildings for the use of the United States are commenced, the plans and full estimates therefor shall be prepared and approved by the Secretary of the Treasury, the Postmaster-General, and the Secretary of the Interior; and the cost of each building shall not exceed the amount of such estimate."

Similar provision is made by the act of March 3, 1875 (18 Stat., 395), for public buildings under the control of the Treasury Department.

While this question is not free from doubt and a *literal* construction of the foregoing provisions would render them applicable to *any building whatever to be erected for public* use, yet I am of opinion that it is not the intention of Congress that they should apply to a building of the character of the one in contemplation. In reaching this conclusion I have not overlooked the opinion of the Attorney-General of July 23, 1890 (19 Op. Att. Gen., 607), in which he held, quoting from the syllabus, that—

"No building, even of a temporary character, to be used for storage purposes, can be erected at the public expense without special authority of Congress."

But this opinion appears to be based mainly upon considerations peculiar to that branch of the service.

There is, however, a further consideration. In 6 Comp. Dec., 296, wherein a similar question was under consideration, it was said:

"In the absence of any clear provision for the purpose, it is not to be presumed that Congress intends that moneys appropriated for public buildings *shall be expended in the construction* of any structure on land which is not owned by the United States, and which would inure to the benefit of private persons, or subject the Government to embarrassment in its use. Perhaps under certain circumstances the erection of inexpensive temporary *buildings on land held by the Government* under a lease might be authorized by an appropriation for some specific object to which they were a necessary incident. But unless the Government owns the land or possesses the right to use and occupy it, it would ordinarily be inexpedient to expend public *money for the erection of any structure* thereon, and manifestly should not be done without clear authority of law."

The act of June 23, 1874 (18 Stat., 220), authorizes the Light-House Board—

"to lease the necessary ground for all such lights and beacons as are used to point out changeable channels, and which in consequence can not be made permanent,"

and appropriations are annually made for such lights. This provision was amended by the act of October 2, 1888 (25 Stat., 512), to include "such lights and beacons as are for temporary use."

The light in connection with which the erection of this building is contemplated is the light on New Haven Long Wharf. This light was established in 1854 and rebuilt in 1861, and is described in your communication as a post light. It appears, therefore, to be neither a light for temporary use nor a light used to point out changeable channels, and therefore that it is not within the foregoing provisions. The appropriation for post lights is also restricted to lights on rivers, lakes, and other waters therein specified, and is not applicable to the post light at New Haven Long Wharf.

I am also of the opinion that the foregoing provision, authorizing the Light-House Board to lease the necessary ground for certain specified classes of lights and beacons, is exclusive. It clearly implies that express authority was deemed necessary for the leasing of ground therefor, and as the express authority granted is restricted to certain classes of lights and beacons therein specified, I think it must be construed to preclude the Board from leasing ground for any light or beacon not embraced in one of the two classes specified.

REQUIREMENT THAT CONTRACTS SHALL BE IN WRITING IS MANDATORY.

Section 3744, Revised Statutes, which requires that all contracts made by the Secretaries of War, the Navy, and the Interior shall be "reduced to writing and signed by the contracting parties with their names at the end thereof," is mandatory, and a written order by the Secretary of War for the purchase of arms and cartridges does not constitute a valid executory contract which can be enforced.

(*Comptroller Tracewell to the Secretary of War, May 18, 1900.*)

By your indorsement of the 27th ultimo I have received the papers in the claim of Messrs. Dudley & Michener, for equitable compensation on account of an alleged breach of an alleged contract for the purchase from them of 20,000 Mauser rifles and 3,000,000 cartridges. You request my decision as to whether there is authority of law for the payment by your Department of the claim referred to.

The only evidence of a contract in this case is found in the following letters:

"WAR DEPARTMENT,
"*Washington, July 9, 1898.*

"GENTLEMEN: You will please deliver to the United States, free on board ship, at any point on the Atlantic coast of the United States that I may designate hereafter, the following property and at the price named, viz:

"20,000 Mauser rifles, new type, seven shot, with bayonets, at $11.50 each.

"3,000,000 smokeless powder cartridges for the above rifles, at $30.00 per thousand.

"The number of cartridges may be increased by 2,000,000, if they can be readily used in the Krag-Jorgensen gun, if you desire, so as to make 5,000,000 in all, and at the same price.

"This property shall be delivered within five weeks, shall receive the usual inspection, and be paid for on delivery to the agent or agents of the United States who may be designated to receive the same.

"The rifles are purchased only on condition that there shall be sold and delivered therewith at least 3,000,000 of the cartridges.

"The understanding is that deliveries will be made as rapidly as possible and within the time named.

"Yours, truly,

"R. A. ALGER, *Secretary of War.*

"Messrs. DUDLEY & MICHENER,
"*Washington, D. C.*"

"WAR DEPARTMENT,
"*Washington, August 18, 1898.*

"GENTLEMEN: On the 9th of July I gave you an order for 20,000 Mauser rifles, new type, with bayonets, and three million smokeless powder cartridges for the same, at a price named by me, conditioned that they should be delivered to the United States free on board ship at any point on the Atlantic coast of the United States that I might designate hereafter within five weeks' time. No notification having come to me to date that arms have been received, the five weeks having passed August 13th last, you are hereby notified that said order is canceled, and the rifles and cartridges will not be accepted by the United States Government.

"Very truly yours,

"R. A. ALGER, *Secretary of War.*

"Messrs. DUDLEY & MICHENER,
"*Washington, D. C.*"